

**IOWA BOARD OF EDUCATIONAL EXAMINERS**

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**IN THE MATTER OF:**

**Jackie Cirbo,**

**Respondent.**

**Case No. 17-52/18BEE0002**

**License No. 1023416**

**Order Regarding Proposed  
Decision**

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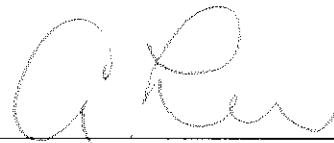
This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. A hearing took place before Administrative Law Judge Laura Lockard on September 21, 2017. Judge Lockard issued a proposed decision on October 18, 2017. The proposed decision was served upon the Respondent and the Board.

At its regular meeting on November 3, 2017, the Board voted to accept the proposed decision without modification. Neither party appealed within the time allowed by 282 Iowa Administrative Code 11.28(1).

**ORDER**

**THEREFORE**, the Proposed Decision in the matter stands as the Board's final ruling.

Dated this 17<sup>th</sup> day of November, 2017.



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Dr. Ann Lebo, Executive Director  
On behalf of the Board

**Copies to:**

Jackie Cirbo (first-class mail and restricted certified mail)  
**RESPONDENT**

Andrew Bracken (electronic mail)  
**ATTORNEY FOR COMPLAINANT**

IOWA BOARD OF EDUCATIONAL EXAMINERS

OCT 18 2017

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In the Matter of:	)	DIA No. 18BEE0002
	)	Case No. 16-143
JACKIE CIRBO,	)	
	)	
Respondent.	)	<b>PROPOSED DECISION</b>

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**STATEMENT OF THE CASE**

On March 20, 2017, Martha Bruckner, Superintendent of the Council Bluffs Community School District, filed a Complaint against Respondent Jackie Cirbo with the Iowa board of Educational Examiners (the Board). The Complaint alleged that Respondent had abandoned a written professional employment contract without prior unconditional release by the employer, in violation of 282 Iowa Administrative Code rule 25.3(5)(a)(3). On July 24, 2017, the Board found probable cause to proceed to hearing and issued a Notice of Hearing and Statement of Charges.

A hearing was held on September 21, 2017 at the Wallace State Office Building in Des Moines, Iowa. The Complainant was represented by attorney Andrew Bracken. Respondent Jackie Cirbo did not appear. The hearing was held in her absence.

The record in the case includes the following: the July 24, 2017 Notice of Hearing and Statement of Charges; the Board's online licensing application for Respondent, including practitioner information and license details; and the Complaint made by Superintendent Martha Bruckner. The record also includes Complainant's Exhibit A. Additionally, the record includes the testimony of Toby Rees.

**FINDINGS OF FACT**

*A. Licensure and Relevant Work History*

Respondent Jackie Cirbo holds a standard license (folder # 1023416). Respondent's license is current and next expires on March 31, 2021.

*B. Employment with Council Bluffs Community School District*

Cirbo began employment with the Council Bluffs Community School District during the 2015-16 school year as a fifth grade teacher at Franklin Elementary, pursuant to a written employment contract. On May 23, 2016, Cirbo signed an Agreement to Modify Teacher's Continuing Contract. This agreement provided that Cirbo's contract would begin on August 22, 2016 and remain in force and effect during the 2016-17 school year. Cirbo was a fourth grade teacher at Franklin Elementary during the 2016-17 school year. (Exh. A, pp. 1-3).

On February 10, 2017, Cirbo e-mailed Kevin Brown, the principal of Franklin Elementary, a resignation letter. In her letter, Cirbo stated that her final day of employment would be March 8, 2017. Cirbo cited a relocation of her husband's job to Colorado as the reason for her resignation. (Exh. A, pp. 4-6).

After receiving the e-mail, Brown communicated with Cirbo to let her know that she would need to ask the superintendent for permission to be released from her contract. After that conversation, Cirbo e-mailed Toby Rees, chief human resources officer of Council Bluffs CSD, on March 1, 2017 to let her know that she wanted to move her last day to April 11, 2017. Cirbo indicated that if Brown could find a suitable replacement before then, the replacement could start whenever available. Later that day, Cirbo sent another e-mail to Rees in which she retracted her offer to stay until April 11 and indicated that she planned to leave as of March 8, as she had previously indicated. On March 3, Cirbo e-mailed Rees again to state that it was her last day at the building and she would be handing in her items at the end of the day. Cirbo did not return to teach when the school break ended on March 8. Council Bluffs CSD prepared documentation reflecting that Cirbo abandoned her job effective March 3, 2017. (Exh. A, pp. 7-12).

The policy of Council Bluffs CSD is that licensed personnel may resign effective at the end of the current school year and/or the contract year by filing a written resignation with the Board Secretary and Executive Director for Human Resources. If a person desires to be released from a signed contract during the school or contract year, he or she must give the Board of Directors written notice clearly stating the reason for the request. The Board of Directors makes the decision whether or not to release the employee. Such a release may be subject to the availability of a suitable replacement. Council Bluffs CSD did not release Cirbo from her contract for the 2016-17 school year. (Exh. A, p. 15; Rees testimony).

When Cirbo initially informed Brown that she planned to leave her employment, the district immediately posted the job and looked to the substitute pool to fill the position. Notwithstanding these actions, the district was not able to find a suitable replacement by the time Cirbo left on March 3. Cirbo's class was covered with a day to day substitute until the district was sure that Cirbo was not coming back, then a long term substitute took over until a permanent replacement was found. The students in Cirbo's class lacked continuity during that time frame. (Rees testimony).

### CONCLUSIONS OF LAW

The legislature created the Board of Educational Examiners with exclusive authority to license practitioners and develop a code of professional rights and responsibilities, practices and ethics. The Board has promulgated a Code of Professional Conduct and Ethics at 282 Iowa Administrative Code Chapter 25. Additionally, the Board has the authority to enforce its rules through revocation or suspension of a license, or by other disciplinary action against a practitioner licensed by the Board.<sup>1</sup> In a case alleging the

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<sup>1</sup> Iowa Code § 272.2 (2017).

failure of a practitioner to fulfill contractual obligations, the person who files a complaint with the board shall represent the complainant in a disciplinary hearing.<sup>2</sup>

Respondent is charged with a violation of 282 Iowa Administrative Code rule 25.3(5)(a)(3). That rule provides that it is a violation of Standard V, relating to contractual obligations, to abandon a written professional employment contract without prior unconditional release by the employer.

The preponderance of the evidence establishes that Respondent Jackie Cirbo violated 282 Iowa Administrative Code rule 25.3(5)(a)(3) by abandoning a written professional employment contract without prior unconditional release from Council Bluffs CSD. Cirbo signed a teaching contract for the 2016-17 school year on May 23, 2016. Under the terms of the contract, Cirbo was required to teach for the entirety of the 2016-17 school year. Cirbo submitted a letter of resignation on February 10, 2017 and left her employment at the district on March 3, 2017 without obtaining an unconditional release. Cirbo had engaged in discussions with the district regarding her resignation, but did not get a release as a suitable replacement had not yet been found.

### Sanction

Where a violation is found, the Board has the authority to impose the following disciplinary sanctions:

1. Revoke a practitioner's license, certificate or authorization.
2. Suspend a practitioner's license, certificate or authorization until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, a practitioner from engaging in specified practices, methods, or acts.
4. Require additional education or training.
5. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
6. Issue a public letter of reprimand.
7. Order any other resolution appropriate to the circumstances of the case.<sup>3</sup>

Absent significant mitigating or aggravating factors, the usual sanction for a first violation of the rule at issue here regarding abandonment of contractual obligations has been placement of a public letter of reprimand in the licensee's permanent licensure file. This sanction is proportional to the violation and serves to create a permanent record of the violation and ensures that any future violation by the same licensee can result in the imposition of a more severe sanction from the Board. Relevant mitigating factors may include, but are not limited to, serious illness of the licensee or an immediate family member, the licensee's spouse receiving an unexpected job transfer to another city or

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<sup>2</sup> Iowa Code 272.2(4) (2017).

<sup>3</sup> 282 Iowa Administrative Code (IAC) 11.33.

state requiring a move to keep the family intact, and the availability of a suitable replacement for the licensee. Relevant aggravating factors may include, but are not limited to the licensee's failure to respond to the charges, the lack of a compelling reason for the resignation, and the difficulty of finding a suitable replacement.

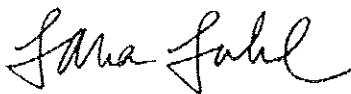
As Cirbo did not appear for the hearing, it is difficult to assess whether there may be relevant mitigating factors at play here. Cirbo cited the relocation of her husband's job in her February 2017 resignation letter, but there is no information in the record regarding whether her husband had any choice in the decision to relocate and whether the relocation was unexpected. Additionally, there is no information regarding when Cirbo became aware that she would be leaving prior to the end of the school year; immediate notification to the district would weigh in her favor, waiting a significant time after learning of the relocation would weigh against. With regard to aggravating factors, Cirbo did not respond to these charges. It appears, however, that she did have a compelling reason for the resignation.

The school district has not argued for any particular sanction, noting that a public reprimand is a frequent sanction where this specific violation is found. The district also noted that Cirbo is a relatively new teacher and has had no prior disciplinary issues. The district believes some sanction is warranted for the good of the district and the public education system in Iowa, in order to send a signal that teachers must respect their contractual obligations. Under the circumstances present here, with neither significant aggravating nor mitigating factors, a public letter of reprimand is an appropriate sanction.

### ORDER

IT IS THEREFORE ORDERED that Respondent Jackie Cirbo shall be issued a public letter of reprimand to be placed in her permanent licensure file as a sanction for her violation of 282 Iowa Administrative Code 25.3(5)(a)(3).

Dated this 18th day of October, 2017.



Laura E. Lockard  
Administrative Law Judge

cc: Jackie Cirbo (First Class Mail)  
Andrew Bracken, Attorney (Electronic Mail)  
Ann Lebo, Board of Educational Examiners (Electronic Mail)

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***Motion to Vacate.*** Pursuant to 282 Iowa Administrative Code 11.23(3), decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or unless an appeal of the decision on the merits is timely initiated within the time provided by rule 282 IAC 11.28. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate in the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

***Appeal on the Merits.*** Pursuant to 282 Iowa Administrative Code 11.28, any adversely affected party may appeal a proposed decision to the Board within 30 days after issuance of the proposed decision. The notice of appeal must be in writing and signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, and the specific findings or conclusions to which exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS  
OF THE STATE OF IOWA**

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In the matter of	)	Case No. 17-52
	)	Folder No. 1023416
Jackie L. Cirbo,	)	
	)	<b>NOTICE OF HEARING</b>
Respondent.	)	<b>AND STATEMENT OF CHARGES</b>

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**YOU ARE HEREBY NOTIFIED** that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing will be held on Thursday, September 21, 2017, before Administrative Law Judge Laura Lockard, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 9:00 a.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9<sup>th</sup> Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 9:00 a.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Council Bluffs Community School District.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code (IAC) chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 IAC 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the request for telephonic testimony must be served on the Board and all parties. Any

resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 IAC 11.18.

5. Prosecution. The Complainant is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to the Complainant at the following address:

Council Bluffs Community School District  
300 West Broadway, Suite 1600  
Council Bluffs, IA 51503

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Dr. Ann Lebo, the Board's Executive Director, at (515) 281-5849.

## **B. SECTIONS OF STATUTES AND RULES INVOLVED**

### **Count I**

7. Respondent is charged with abandoning a written professional employment contract without prior unconditional release by the employer, in violation of Board rule 282 IAC 25.3(5)(a)(3).

## **C. JURISDICTION AND LEGAL AUTHORITY**

8. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 IAC chapter 11.

## **D. FACTUAL CIRCUMSTANCES**

9. Respondent holds a STANDARD LICENSE (FOLDER # 1023416). Respondent's license is current and will next expire on March 31, 2021.

10. Respondent was employed with Council Bluffs Community School District, on August 6, 2015 to serve as a fifth grade teacher. She remained in this position until her resignation on March 8, 2017.



11. On March 20, 2017, the Board of Educational Examiners received a complaint against Respondent alleging a violation of the Code of Ethics. On June 16, 2017, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

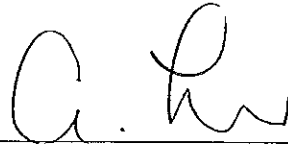
12. Investigation revealed that on February 10, 2017 Respondent informed her supervisor, Kevin Brown, that she was resigning her position. She did not report for work after March 8, 2017.

13. Respondent did not obtain a release from the Council Bluffs Community School District prior to Respondent's resignation, as required by 282 IAC 25.3(5)(b)(1), and did not provide notice to the employing board in accordance with 282 IAC 25.3(5)(b)(2).

#### E. SETTLEMENT

14. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 IAC 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Complainant identified in Section A, above.

Dated this 24<sup>th</sup> day of July, 2017.



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Dr. Ann Lebo, Executive Director  
Iowa Board of Educational Examiners

Copies to:

Jackie L. Cirbo (first-class mail and restricted certified mail)  
RESPONDENT

Council Bluffs Community School District (electronic mail)  
300 West Broadway, Suite 1600  
Council Bluffs, IA 51503  
COMPLAINANT